

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE.

WILLIAM T. JOHNSON JR.
PETITIONER.

V.

STATE OF DELAWARE
AND THOMAS CARROLL, WARDEN.
RESPONDENTS.

NO: 05-

COURT BELOW:

SUPERIOR COURT NEWCASTLE COUNTY.

JUDGE FRED S. SILVERMAN.

ID. 9606009907.

CR. A. NOS. IN 96070070.

PETITIONERS APPENDIX FOR WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. § 2254, FOR THE DISTRICT OF DELAWARE.

DATED: 6-21-2005.

William T. Johnson Jr.

Petitioner: 202367.

D.C.C.

1181 Paddock Rd.
Smeyers, Del. 19977

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

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IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

V.

WILLIAM JOHNSON
AKA TIMOTHY JOHNSON

:
:
: INDICTMENT BY THE GRAND JURY
: I.D. 9606009907
:
:

The Grand Jury charges WILLIAM JOHNSON AKA TIMOTHY JOHNSON with the following offenses:

COUNT I. A FELONY

J#N 96-07-0070

THEFT in violation of Title 11, Section 841 of the Delaware Code of 1974, as amended.

WILLIAM JOHNSON AKA TIMOTHY JOHNSON, between the 24th day of December 1995 and the 10th day of January, 1996 in the County of New Castle, State of Delaware, did take pursuant to a common scheme, with intent to appropriate, property consisting of assorted merchandise belonging to Sears and valued in excess of \$500.00.

COUNT II. A MISDEMEANOR

J#N 96-07-0071

ISSUING A BAD CHECK in violation of Title 11, Section 900 of the Delaware Code of 1974, as amended.

WILLIAM JOHNSON AKA TIMOTHY JOHNSON, on or about the 24th day of December, 1995, in the County of New Castle, State of Delaware, did issue check number 129, drawn on the account of William T. Johnson, Jr. held with the PNC Bank and made payable to Sears stores in the

A-1.

amount of \$299.99, knowing that said check would not be honored by the drawee.

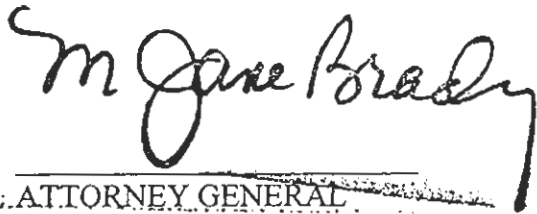
COUNT III. A MISDEMEANOR

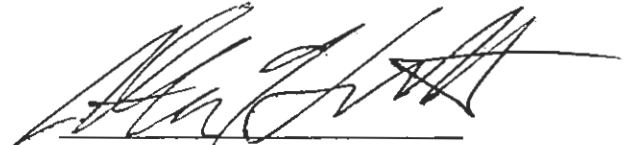
J#N 96-07-0072

ISSUING A BAD CHECK in violation of Title 11, Section 900 of the Delaware Code of 1974, as amended.

WILLIAM JOHNSON AKA TIMOTHY JOHNSON, on or about the 10th day of January, 1996, in the County of New Castle, State of Delaware, did issue check number 138, drawn on the account of William T. Johnson, Jr. held with the PNC Bank and made payable to Sears stores in the amount of \$288.96, knowing that said check would not be honored by the drawee.

A TRUE BILL


ATTORNEY GENERAL


(FOREPERSON)


DEPUTY ATTORNEY GENERAL

A-2.

TRUTH IN SENTENCING GUILTY PLEA FORM

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR _____ COUNTY

STATE OF DELAWARE

V.

CR. A. NO.

960609207

WILLIAM JOHNSON

The defendant must answer the following questions in his or her own handwriting.

Date of Birth 11-12-71 Last grade in school completed 12thHave you ever been a patient in a mental hospital? noAre you under the influence of alcohol or drugs at this time? noHave you freely and voluntarily decided to plead guilty to the charges listed in your written plea agreement? yesHave you been promised anything that is not stated in your written plea agreement? noHas your attorney, the State or anyone threatened or forced you to enter this plea? no

Do you understand that because you are pleading guilty you will not have a trial and you therefore waive (give up) your constitutional right:

- (1) to be presumed innocent until the State can prove each and every part of the charge(s) against you beyond a reasonable doubt;
- (2) to a speedy and public trial;
- (3) to trial by jury;
- (4) to hear and question the witnesses against you;
- (5) to present evidence in your defense;
- (6) to testify or not testify yourself; and,
- (7) to appeal to a higher court?

96 OCT 23 P 3:45

PROBATION DEPT

yes

OFFENSE	STATUTORY PENALTY	TIS GUIDELINE
1. <u>Theft (F)</u>	<u>2 Yr.</u>	<u>12 mos @ 1/2</u>
2. _____	_____	_____
3. _____	_____	_____

TOTAL CONSECUTIVE MAXIMUM PENALTY: 2 Yr. (See Rule 11 plea)Do you understand that, if incarcerated, you will not be eligible for parole and the amount of early release credits which you may earn will be limited to a maximum of ninety (90) days per year? yesIs there a mandatory minimum penalty? no If so, what is it? _____Has anyone promised you what your sentence will be? noAre you on probation or parole? yes (A guilty plea may constitute a violation.)Do you understand that a guilty plea to a felony will cause you to lose your right to vote, to be a juror, to hold public office, to own or possess a deadly weapon and other civil rights? yesAre you satisfied with your lawyer's representation of you and that your lawyer has fully advised you of your rights and of the result of your guilty plea? yes

R. R. R. R.

Defense Counsel

10-23-96

Date

William Johnson

Defendant

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE,
 WILLIAM T. JOHNSON JR.
 V.
 STATE OF DELAWARE.

ID.#9606009907.
 CR.A.No\$ IN 96070070
 SUPERIOR COURT,
 NEWCASTLE COUNTY,
 THE HONORABLE JUDGE
 FRED S. SILVERMAN.

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 CLERK OF COURT

[Signature]

MOTION FOR AMENDED SENTENCING AND/OR
 TO WITHDRAW GUILTY PLEA.

COMES NOW THE DEFENDANT WILLIAM T. JOHNSON JR.,
 PRO/SE, WHO RESPECTFULLY MOVES THIS HONORABLE COURT
 FOR AN ORDER GRANTING HIS REQUEST FOR A EVIDENTIARY
 HEARING TO AMEND AND/OR TO WITHDRAW GUILTY PLEA
 THAT WAS INVALID UNDER STATE AND FEDERAL
 CONSTITUTIONAL LAW. IN SUPPORT OF THIS MOTION
 THE DEFENDANT OFFERS THE FOLLOWING GROUNDS.

ON OCTOBER 23RD, 1996 THE DEFENDANT PLED GUILTY
 TO A THEFT CLASS G FELONY CHARGE; IN VIOLATION
 OF 11 DEL.C. § 841(A). THE PLEA AGREEMENT WAS ACCEPTED BY
 THE HONORABLE JUDGE: FRED S. SILVERMAN, AND
 SENTENCE WAS IMPOSED THAT SAME DAY.

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 CLERK OF COURT

(1).

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THE DEFENDANT HAS NOW ACKNOWLEDGE THAT,
 ACCORDING TO (70 DEL. LAWS C. 364 PROVIDES:
 THAT THE GOVERNOR HAS AMENDED THE THEFT CLASS (G)
 FELONY VALUE OF PROPERTY FROM \$500 TO \$1,000 OR GREATER,
 "THIS AMENDMENT BECAME EFFECTIVE THE DAY AFTER
 ITS ENACTMENT INTO LAW, AND MUST APPLY TO
 OFFENSES COMMITTED ON OR AFTER THAT DATE!"

THE ACT WAS SIGNED BY THE GOVERNOR ON JULY 11TH, 1995.
 THEREFORE, THE DEFENDANT'S ARGUMENT IS THAT THE
 PLEA AGREEMENT DATED OCTOBER 23RD, 1996 IS ERRONEOUS,
 INCORRECT UNDER STATE AND FEDERAL CONSTITUTIONAL LAW,
 AND SHOULD NOT HAVE BEEN ACCEPTED BECAUSE OF GROUNDS:

(A) THE DESCRIPTION OF PLEA READS THEFT OVER \$500 CLASS (G)
 FELONY WHICH IS INCORRECT, IT SHOULD READ THEFT
 UNDER \$1,000 CLASS (A) MISDEMEANOR, BECAUSE THE GOVERNOR'S
 AMENDMENT ENACTMENT WAS EFFECTIVE BEFORE THE OFFENSES
 IN THIS CASE WAS ALLEGEDLY COMMITTED, AND THE
 ENACTMENT MUST APPLY TO THIS CASE IN ORDER FOR THE
 PLEA TO BE VALID.

(B) THE VALUE OF PROPERTY INVOLVED IN THIS CASE
 IS LESS THAN \$1,000 AND ACCORDING TO THE GOVERNOR'S
 ENACTMENT BY CONSTITUTIONAL LAW, THE ALLEGED THEFT
 IS AN CLASS (A) MISDEMEANOR, AND NOT A CLASS
 (G) FELONY.

(C) COUNSEL RAYMOND M. RADULSKI VIOLATED THE DEFENDANT'S SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, BY FAILING TO BRING TO THE DEFENDANT'S ATTENTION MATTERS CONCERNING THE GOVERNOR'S AMENDMENT ENACTMENT, WHICH HAD COUNSEL DONE SO, THE DEFENDANT WOULD NOT HAVE ACCEPTED PLEA AGREEMENT.

WHEREFORE, PURSUANT TO THE DUE PROCESS CLAUSE UNDER THE FOURTEENTH AMENDMENT, A DEFENDANT HAS THE RIGHT TO ATTACK ANY ILLEGAL CONVICTION OR SENTENCE, HAVING FOUND THAT THE DEFENDANT HAS SHOWN PROPER CAUSE, AND WHICH ENTITLES HIM TO SUCH RELIEF THE COURT FINDS JUST. THE DEFENDANT HAS SHOWN "PREJUDICE THAT AMOUNTED TO MANIFEST INJUSTICE," WHICH BARS TO RELIEF WILL NOT APPLY TO THIS CASE WHERE THE TRIAL COURT HAS LACKED JURISDICTION, OR THAT THERE WAS A MISCARriage OF JUSTICE BECAUSE OF A CONSTITUTIONAL VIOLATION THAT UNDERMINED THE FUNDAMENTAL LEGALITY, RELIABILITY, INTEGRITY, OR FAIRNESS OF THE PROCEEDINGS LEADING TO THE JUDGMENT OF CONVICTION.

WHEREFORE, THE DEFENDANT REQUESTS THAT THE HONORABLE JUDGE: FRED S. SILVERMAN CONDUCT A HEARING TO CORRECT THIS MATTER AT HIS EARLIEST POSSIBLE CONVENIENCE.

Dated 11-15-99.

RESPECTFULLY SUBMITTED.

William F. Johnson #202367
Defendant's Counsel
D.C.C.

P.O. Box 500

Ameyna, Del. 19977

(3). A-6.

CERTIFICATE OF SERVICE

I, WILLIAM T. JOHNSON JR., hereby certify that I have served a true and correct copy(ies) of the attached: ENCLOSED MOTION. upon the

following parties/person(s):

TO: DIANE M. COFFEE
DEPUTY ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
820 N. FRENCH ST 7TH FLOOR
WILM, DEL. 19801

TO: _____

TO: _____

TO: _____

FILED
PROthonotary
1999 NO 17 PM 1:45

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977, postage to be paid by the Dept. of Corrections.

On this 15th day of NOVEMBER, 1999.

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